

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Selection and Appointment

Certification from Eligible List

Removal of Names

Proposed Amendment: N.J.A.C. 4A:4-4.7

Authorized By: Civil Service Commission, Robert M. Czech, Chair/CEO.

Authority: N.J.S.A. 2C:52-27(c), 11A:2-6(d) and 11A:4-1 et seq.; and
P.L. 2008, c. 29.

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN 2011-222.

A public hearing concerning the proposal will be held on:

Monday, November 14, 2011 at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Elizabeth Rosenthal at (609) 984-7140 if you wish to
be included on the list of speakers.

Submit written comments by December 16, 2011 to:

Henry Maurer, Director

Merit System Practices and Labor Relations

Civil Service Commission

P.O. Box 312

Trenton, New Jersey 08625-0312

The agency proposal follows:

Summary

The Civil Service Commission proposes an amendment to N.J.A.C. 4A:4-4.7, Removal of names, to address two issues regarding eligible list removals. The first issue was recently brought to the attention of the Commission by the Administrative Office of the Courts (AOC). The AOC has pointed out the need for an amendment that would permit consideration of expunged criminal records in making appointments to judiciary titles, as N.J.S.A. 2C:52-27(c) requires an individual seeking judiciary employment to reveal expunged records. Therefore, N.J.A.C. 4A:4-4.7 is proposed for amendment to add judiciary titles to the list of other titles (that is, law enforcement, firefighter and correction officer) subject to the consideration of expunged records in the selection and appointment process.

The second issue arises as a consequence of list removal appeals by a Juvenile Detention Officer (JDO) candidate challenging the use of expunged records regarding three different JDO lists since 2007. For example, *In the Matter of Robert L. Robinson, Juvenile Detention Officer (C2166K), Hudson County* (decided February 16, 2011). Although N.J.A.C. 4A:4-4.7 does not state that expunged records can be used as a factor in removing a JDO

candidate from a list, the Commission reasoned in *Robinson* that a “[JDO] is employed in a paramilitary setting and is charged with maintaining discipline and order in a juvenile custodial facility. Moreover, given the vulnerability of the population for which a [JDO] is responsible, an applicant is expected to project an image of maturity and integrity and provide the juveniles in custody with a positive role model.” Therefore, an amendment to N.J.A.C. 4A:4-4.7 is proposed to expressly permit consideration of expunged records as a factor in list removals of JDO candidates.

In addition to these substantive changes to N.J.A.C. 4A:4-4.7, the Commission also proposes technical changes to bring the rule’s terminology in line with P.L. 2008, c. 29, which abolished the Department of Personnel and the Merit System Board, and replaced them with the Civil Service Commission, and placed the Commission in but not of the Department of Labor and Workforce Development. References to the Department of Personnel are therefore proposed for deletion at N.J.A.C. 4A:4-4.7(a)3 and 8, (b), (b)1 and 2, (c) and (g) and replacement with either “appropriate representative of the Civil Service Commission” or simply “Civil Service Commission,” as applicable. References to the Commissioner of, or the Department of, Personnel are proposed for deletion and replacement with “Chairperson of the Civil Service Commission or designee” at N.J.A.C. 4A:4-4.7(a)4ii and 11, and (e).

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Civil Service Commission anticipates a positive social impact to result from the proposed amendment to N.J.A.C. 4A:4-4.7. Amending the rule to permit the consideration of the expunged criminal records of judiciary employment candidates simply codifies existing law, as noted in the Summary above. Just as important, judiciary employees would be rightly treated the same as law enforcement, firefighter and correction officers in this regard; all such employees, including judiciary employees, play central roles in maintaining public order and safety. The same is true for Juvenile Detention Officers who, like correction officers, serve in a paramilitary setting in which discipline must be maintained and positive role models are needed.

Economic Impact

The Commission does not anticipate an economic impact. However, it is expected that the number of appeals to the Commission may be reduced somewhat regarding list removals if N.J.A.C. 4A:4-4.7 is expressly amended to permit the consideration of expunged records in the selection and appointment process for judiciary employees and Juvenile Detention Officers.

To a limited extent, therefore, the Commission may need to allocate fewer resources to the processing of list removal appeals.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendment concerns the selection and appointment of New Jersey civil service employees and is not subject to any Federal standards or requirements.

Jobs Impact

It is not anticipated that the proposed amendment would cause the generation or loss of jobs. The proposed amendment concerns the selection and appointment of New Jersey civil service employees.

Agriculture Industry Impact

It is not anticipated that the proposed amendment would have any agriculture industry impact. The proposed amendment concerns the selection and appointment of New Jersey civil service employees.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment would govern the use of expunged criminal records in selecting individuals for appointment to judiciary positions and to the title of Juvenile Detention Officer in State service.

Smart Growth Impact

It is not anticipated that the proposed amendment would have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002).

Housing Affordability Impact Analysis

Since it concerns the use of expunged criminal records in selecting individuals for appointment to judiciary positions and to the title of Juvenile Detention Officer in State service, the proposed amendment would have no impact on the number of housing units or the average cost of housing in New Jersey.

Smart Growth Development Impact Analysis

Since it concerns the use of expunged criminal records in selecting individuals for appointment to judiciary positions and to the title of Juvenile Detention Officer in State service, the proposed amendment would have no impact on new construction within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 4. CERTIFICATION FROM ELIGIBLE LISTS

4A:4-4.7 Removal of names

(a) The name of an eligible may be removed from an eligible list for any of the following reasons:

1. The causes for disqualification listed in N.J.A.C. 4A:4-6.1;

2. Regular appointment through certification to the title for which the list was promulgated or made appropriate, except that the appointment to a lower title will not be cause for removal;

3. Inability, unavailability or refusal of eligible to accept appointment.

An eligible who has declined appointment may, upon written request, have his or her name withheld from future certifications until available for appointment. [The Department of Personnel] **An appropriate representative of the Civil Service Commission** must be notified when the eligible wishes to be considered for certification;

4. The eligible has a criminal record which adversely relates to the employment sought.

i. The following factors may be considered in determining whether a criminal record adversely relates to employment:

(1) The nature and seriousness of the crime;

(2) The circumstances under which the crime occurred;

(3) The date of the crime and age of the eligible when the crime was committed;

(4) Whether the crime was an isolated event; and

(5) Evidence of rehabilitation.

ii. The presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer, **juvenile detention officer**, [or] firefighter **or judiciary** titles and other titles as the [Commissioner] **Chairperson of the Civil Service Commission or designee** may determine.

5. Notice by the postal authorities that they are unable to locate or deliver mail to the eligible;

6. Non-compliance with the instructions listed on the notice of certification;

7. Discontinuance of an eligible's residence in the jurisdiction to which an examination was limited or for a title for which continuous residency is required;

8. Discontinuance of the eligible's employment in the unit scope to which a promotional examination was limited, except when the eligible has accepted a temporary or interim appointment in another unit scope. An employee who subsequently returns to the unit scope within current continuous service may request, in writing to [the Department of Personnel] **an appropriate representative of the Civil Service Commission**, that his or her name be restored to the promotional list;

9. Employees who are involuntarily transferred shall be retained on a promotional list until they have had an opportunity to take a promotional

examination in the new promotional unit scope or have been appointed from the list;

10. Failure to maintain interest in a geographical area or choice; and

11. Other valid reasons as determined by the [Commissioner]

Chairperson of the Civil Service Commission or designee.

(b) An appointing authority that requests removal of an eligible's name from a list shall submit to [the Department] **an appropriate representative of the Civil Service Commission**, no later than the date for disposition of the certification, all documents and arguments upon which it bases its request.

1. Upon request of the eligible or upon the eligible's appeal, the appointing authority shall provide the eligible with copies of all materials sent to the [Department] **appropriate Commission representative.**

2. If the appointing authority fails to provide either the [Department] **appropriate Commission representative** or the eligible with copies of materials, the request for removal may be denied.

(c) [The Department of Personnel] **An appropriate representative of the Civil Service Commission** shall determine if there are sufficient grounds for removal, notify the appointing authority and the eligible of its decision, and advise the eligible of his or her appeal rights.

(d) An eligible may appeal his or her removal from an eligible list utilizing the procedures in N.J.A.C. 4A:4-6.3.

(e) The removal of names from an eligible list will advance the rank order of all names below it. The [Department] **Chairperson of the Civil Service Commission or designee** may supplement a certification to provide the appointing authority with the number of names necessary for a complete certification.

(f) Acceptance or refusal of a temporary or interim appointment shall not be cause for removal from an eligible list.

(g) When the [Department of Personnel] **Civil Service Commission** has accepted a single application for one or more title areas, pursuant to N.J.A.C. 4A:4-2.3(c), an eligible whose name has been removed from the pool of eligibles for one jurisdiction or title area for cause shall be removed from the pool of eligibles for any other jurisdiction or title area.

(h) When an eligible has received a regular appointment from a certification of a pool of eligibles, the eligible shall be removed from the pool of eligibles for that title area only.